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ABSTRACT

The North Carolina Teacher Tenure Act of 1972 requires that regulations for handling teacher records be adopted. This pamphlet contains regulations that, if adopted by school boards, will implement the statutory requirements of the tenure act. The proposed regulations contain several sections, each followed by a comment explaining or clarifying its intent. In some cases, the comments are essential to the meaning of a section and are designed to be adopted with the regulation. Options are provided when one or more reasonable alternatives are available. (Author/JF)

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Proposed School Board Regulations Governing Access and Maintenance of Teacher Personnel Records

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The growing concern about public access to a teacher's personnel file and the teacher's right to privacy has for some time made written school board regulations for handling teacher records desirable. When the North Carolina Teacher Tenure Act (G.S. 115–142) becomes effective on July 1, 1972, however, school boards will be *required* to adopt such regulations. Following are regulations that if adopted by local school boards will implement the statutory requirements of the tenure act.

The proposed regulations contain several sections, each followed by a comment explaining or clarifying its intent. In some cases the comments are essential to the meaning of a section; should the section be adopted, the comments should be adopted with it. Generally, however, the comments are simply explanatory and should not be adopted along with the section.

Bracketed material indicates an option for the school board. Options are provided when one or more reasonable alternatives are available.

Several persons—including school board members, teachers, and administrators—reviewed these proposed regulations. Their comments and suggestions were invaluable and are much appreciated.

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SECTION 1. MAINTENANCE OF RECORDS

a. Personnel File

The _____ administrative school district shall maintain a personnel file for each teacher and administrator [each teacher, administrator, and employee] employed.

The personnel file shall include all records and documents collected by the school concerning the teacher or administrator. It shall include any of the following records that are retained by the school:

1. evaluation reports made by the administration;
2. commendations for and complaints against the teacher or administrator made by the administration;
3. written suggestions for corrections and improvements made by the administration;
4. teacher certificates;
5. health certificates;
6. standard test scores;
7. pre-employment references;
8. academic records;
9. application forms; and
10. all other records kept about a teacher or administrator [teacher, administrator, or employee].

b. Location of File

The personnel file shall be maintained in the office of the superintendent.

Comment: The Teacher Tenure Act, G.S. 115–142(b), sets out these requirements for the teacher's personnel file:

> (b) Record of Complaints, Commendations and Suggestions.—There shall be maintained in the office of the superintendent a file of any complaints against, commendations of or written suggestions for corrections and improvements made to each teacher by the administration. The complaints, commendations and suggestions shall be signed by the person making the complaint, commendation or suggestion and shall be placed in each teacher's personnel file only after reasonable notice to the teacher. Any denial or explanation relating to such complaint, commendation or suggestion which the teacher desires to make shall be placed in the file. The personnel file shall be open for inspection by such teacher at all reasonable times but shall be open to other persons only in accordance with such rules and regulations as the board shall adopt.

This section implements the above statute by requiring teacher personnel files to be kept and sets out the types of information to be included in them. The statute requires maintenance of a personnel file for each teacher. Teacher is defined by G.S. 115–142(a)(9) to mean any person who holds at least a Class A certificate, and thus includes supervisors, principals, and department directors. Superintendents, however, are excluded. Although superintendents are excluded from the application of the tenure act, there is no reason that the record-keeping procedure for them should be different from that for teachers and principals; therefore, the regulation applies to superintendents, associate superintendents, and assistant superintendents. The bracketed language is set out for those boards that want to handle non-professional employee personnel records in the same manner as teacher personnel records. Since the statute does not apply to nonprofessional employee personnel records, the bracketed portion is entirely optional.

The personnel file has been interpreted in these proposed regulations to include all records that are maintained about teachers and administrators; the explanation for this interpretation is discussed in the comment to Section 4 dealing with the individual's access to the file maintained about him. Listing the types of records to be kept in the personnel file does not mandate that all of those items must in fact be kept by the school district; rather, the regulation means that *if* any of those types of records listed are kept, they must be included in the personnel file.

The file is to be maintained in the superintendent's office. The Attorney General has issued an opinion that two separate files may be maintained. His opinion states that only items 1 through 3 are required to be kept in the superintendent's office; other information may be kept elsewhere. Nevertheless, keeping the information in multiple places is not recommended. Several school administrators have indicated that practically all school systems in North Carolina now keep such information as teacher certificates and applications in one central location—usually the superintendent's office, and not in the teacher's school. Thus maintaining one file in the superintendent's office should not be operationally burdensome.

This regulation does not prevent the principal from keeping a copy of any evaluation he has written for his personal file. However, the personnel file maintained in the superintendent's office is the official one.

SECTION 2. ADDITIONS TO THE PERSONNEL FILE

No evaluation, commendation, complaint, or suggestion may be placed in the personnel file unless it meets the following requirements:

a. The comment must be signed and dated by the person making the evaluation, commendation, complaint, or suggestion; and

b. The superintendent or the teacher's principal must have notified the teacher by letter or in person that the comment is available for inspection before it is placed in the teacher's or administrator's personnel file.

The teacher or administrator [teacher, administrator, or employee] shall sign or initial the evaluation, commendation, complaint, or suggestion written about him to indicate that he has inspected it.

The teacher or administrator [teacher, administrator, or employee] may offer a denial or explanation of the evaluation, commendation, complaint, or suggestion, and any such denial or explanation shall become a part of his personnel file.

Comment: This section implements the requirements of G.S. 115–142(b) concerning the addition of complaints and evaluations to the file. The teacher's signature or initial on the comment concerning him should be required in order to establish that the teacher had an opportunity to read the comment. The teacher's signature or initial indicates only that he has read the comment and not that he agrees with it.

SECTION 3. GENERAL ACCESS TO A PERSONNEL FILE

Access to a personnel file may be permitted to the following persons without the consent of the teacher or administrator [teacher, administrator, or employee] about whom the file is maintained:

a. Those school officials involved in the evaluation process of the individual and the school board if its examination of the file relates to the duties and responsibilities of the board.

b. Members of the review panel of the Professional Review Committee if the teacher has requested a review by them in a demotion or dismissal procedure.

No other person may have access to a personnel file except under the following circumstances:

a. When the teacher or administrator [teacher, administrator, or employee] gives written consent to the release of his records. The written consent must specify the records to be released and to whom they are to be released. Each request for consent must be handled separately; blanket permission for release of information shall not be accepted.
b. When subpoenaed or under court order.

Comment: There has been confusion in North Carolina as to whether teacher personnel records fall within the North Carolina public records statute, G.S. 132–1, and are therefore open to inspection by any person. No North Carolina judicial decision has interpreted the statutory definition of a public record, but several Attorney General's opinions have given a broad, liberal interpretation to the statute. Under these interpretations, practically all records kept by public officials are public records, and inspection is cut off only by a specific statute requiring a certain type of record to be kept confidential. G.S. 115–142(b) is such a statute as to the public at large. It prohibits inspection by the public except those persons granted access under rules and regulations adopted by the school board. If a single personnel file is maintained, no problem arises with the public records statute because the exception in G.S. 115–142(b) clearly covers the file. This section implements G.S. 115–142(b) by establishing regulations governing access.

Since the U.S. Supreme Court decision in *Griswold v. Connecticut*, 381 U.S. 479 (1965), there has been much litigation and legal discussion about an individual's right to privacy. [*See* **A. Miller, The Assault on Privacy: Computers, Data Banks, and Dossiers** (1971); **A. Westin, Privacy and Freedom** (1968).] The legal analysis emerging is that a teacher has a right to privacy that must be balanced with the school's need to collect certain personal information about him in order to carry out its educational function. School officials who have a proper need to know can collect and use information even if doing so violates the teacher's privacy. On balance, the need for certain school officials to have such information is more important than the teacher's privacy. Based on this reasoning, the regulation gives those school officials who are involved in the evaluation process, such as the teacher's principal or the superintendent, access to the

files without the consent of the individual about whom the file is maintained. Other persons, such as credit lenders, parents, or other teachers, cannot present a proper educational purpose for examining or using such information that would allow an invasion of privacy. For these other persons, access to the file should be granted only with the consent of the person about whom the file is maintained.

SECTION 4. INDIVIDUAL'S ACCESS TO HIS PERSONNEL FILE

A teacher or administrator [teacher, administrator, or employee] may have access to his own personnel file at all reasonable times.

The right to access includes the right to make written objections to any information contained in the file. Any written objection shall be signed and dated by the teacher or administrator [teacher, administrator, or employee], and it shall become part of the personnel file.

Comment: G.S. 115–142(b) requires that a teacher have access to his personnel file. The statutory language is "the personnel files shall be open for inspection by such teacher . . . but shall be open to other persons only in accordance with such rules and regulations as the board shall adopt." It is my opinion that the words "the personnel file" should be interpreted to mean that there is only one personnel file, which contains all of the records held by the school administration concerning a teacher. That file is always open at reasonable times to the teacher but is open to other persons only in accordance with school board regulations.

It should be noted, however, that the Attorney General has issued an opinion that two separate files may be maintained, and the file required to be kept by G.S. 115–142(b) need include only evaluations, commendations, complaints, and suggestions made by the administration. The opinion indicated that all other records, including sensitive matter like pre-employment references, could be kept in a second file to which the teachers and members of the public could be denied access. However, if the interpretation allowing two separate files is accepted, a contrary result would follow. Records kept about teachers other than evaluations by the administration would come within the public records statute. As public records, they would be open to any person wishing to inspect

them, including the teacher. Logic argues that the legislature probably meant by the language in G.S. 115-142(b) that, except for the legislative determination that any teacher shall have access to all of his own files, the school board by regulation determines who has access to all records kept about a teacher.

Furthermore, maintaining one file is preferable for policy reasons. The existence of two files may cause the teacher to suspect that the second file contains information prejudicial to him, which would likely create a morale problem more damaging to the school system than keeping the teacher from seeing his complete file is valuable. Another reason for opening records to persons about whom they are kept is to assure the accuracy of the records.

This section provides that records shall be open for inspection at all reasonable times as required by G.S. 115-142(b). Reasonable time means during regular office hours.

SECTION 5. PROCEDURE

The superintendent shall have the over-all responsibility for maintaining and preserving the confidentiality of teacher personnel files. He may, however, designate another school official to perform these duties for him.

The superintendent or his designee is responsible for granting or denying access to records on the basis of these regulations.

Comment: This section puts the responsibility for maintaining the records and implementing these regulations on the superintendent either directly or through his designee.